IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

A.O. 1223 of 2001

(Old No. 217/1992)

Date of decision 11-7-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 11-7-2006

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

A.O. No. 1223 of 2001
(Old A.O. No. 217 of 1992)

1. The State of U.P.

2. Pariyojna Nideshak, Jalgam Parbandhak
Pariyojna, Pauri Garhwal ..Defendant/Appellant

Versus

1. Smt. Deepa Devi
W/o Late Kailash Chandra
R/o Village and Post Nairi Pattii Langoor Bala,
District – Pauri Garhwal

2. Km. Mamta
D/o Late Shri Kailash Chandra
Through her mother Smt. Deepa Devi
W/o Late Kailash Chandra ... Claimant/respondents

Sri Nand Prasad, learned Standing Counsel for the State.

Hon'ble J.C.S. Rawat, J.

This present appeal has been preferred against the judgment and award dated 16.06.1992 passed by Shri Rajeev Kumar, Commissioner Workmen's Compensation, Pauri Garhwal in Workmen's Compensation Case No. 2 of 1990-91 titled as Smt. Deepa Devi and another Vs. Pariyojna Nideshak and another.

Brief facts for the disposal of this appeal are that the deceased Kailash Chandra aged about 27 years was employed with the defendant/appellant as a daily wager (Ardhali) and he was getting a sum of Rs. 600/- p.m. as a salary. The deceased was attached with Shiv Charan Rawat, Range Officer, Pauri. It was

further alleged that on 09.05.1989 some miscreants committed murder of the Range Officer as well as of the deceased in the office while the deceased was employment with the defendant/appellant. Thereafter, the report was lodged to the police station and the post mortem was conducted at the Civil Hospital. The claimant-Deepa Devi given a representation to the defendant/appellant to pay the compensation for the death of her husband during the employment with defendant/appellant. When no heed was paid to the request of the claimant, Deepa Devi-wife of the deceased filed a petition claiming Rs. 52,000/- as compensation.

The said petition was contested and it was alleged that the deceased was not in the employment of the appellant and the department prayed that the petition may be dismissed.

After appraisal of the pleadings of the parties, the necessary issues were framed by the learned Commissioner.

The claimant-Deepa Devi examined herself before the trial court and she supported the allegations made in the petition.

The defendant/appellant also adduced the evidence of Senior Assistant of Up Jalagam Pariyojna, Pauri, Sabar Singh Rawat-DW1. He had stated in his deposition that the deceased had been working in the department of defendant/appellants and he was a daily wager in the department and he was continuously working in the department. He had also admitted in

his cross-examination that the deceased had been working with the department since 16.08.1988 to the date when he was murdered in the Idgad Range Office.

The claimant had also filed the certificate given by the Gram Pradhan that the date of birth of the deceased according to the death register was 1st April, 1963 and the copy of the certificate was also filed alongwith the said certificate.

After appraisal of the evidence on record, the learned Commission came to the conclusion that the deceased was in the employment of the defendant/appellant and he was an employee within the meaning of Section 2 (n) of the Workmen's Compensation Act, 1923. He further held that the claimant had failed to prove that he had been earning a sum of Rs. 600/- p.m. as claimed by the claimant/respondents. The Commissioner further held that the deceased was earning a sum of Rs. 15/- per day, i.e, 450/- p.m. as a salary. The Commissioner also found that the deceased was 26 year of age at the time of the murder. He calculated the amount according to the formula provided under the Act and awarded a sum of Rs. 38,750.40 to the claimant.

The learned counsel for the defendant/appellants raised the following question of law that whether the deceased was workmen within the meaning of Section 2 (n) of the Workmen's Compensation Act, 1923. It was further contended by the learned Standing Counsel that the deceased-Kailash Chandra was not a regular employee. He was a casual employee of Rs. 15/- per

day, as such, the deceased could not be treated as workmen under the provision of the Act. There is no representation on behalf of the claimant/respondents before the court.

Section 2 (n) of the Workmen's Compensation Act, 1923 provides as under :-

> *(n) "Workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business)"*

Now the only question for the consideration is as to whether the deceased was a casual labour or whether he was not a casual labour. Section 2 (n) of the Workmen's Compensation Act, 1923 only excluded the casual labour from the definition of workmen. The defendant/appellant adduced the evidence of Sabar Singh Rawat-DW1 who had stated in his evidence that the deceased had been working since 16.08.1988 to 0905.1989 (when he was murdered) in the department and he was getting a salary of Rs. 15/- per day. His services were taken in continuation by the department through he was a daily wager. There is difference between the daily wager and casual labour. Casual labour means a person who is employed for a day, two or three and thereafter his services are dispensed with by lapse of time itself. Whereas the daily wager is a person who is employed on the wages but continue to work till his services are dispensed with. It is admitted case of the department/appellant that the deceased had been working since 19.08.1988 and he was in

continuous employment to the defendant/appellant, as such, his services cannot be said to be causal in nature. The learned Commissioner Workmen's Compensation was justified in holding that the deceased was in the employment of the defendant/appellant and he was not a casual labour and he was a Workman within the definition of Section 2 (n) of the Workmen's Compensation Act. As such, the substantial question of law as indicated above decided accordingly.

In view of the above, the appeal devoids of merit and is liable to be dismissed and is dismissed accordingly.

All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

11th July, 2006.
Shiv